

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of Missouri is not yet reported, but appears on pages 179 to 195 of the transcript of the printed record filed herewith, and is reported in 175 S. W. (2) 435.

STATEMENT OF THE CASE.

The essential facts of the case are fully stated in the petition for a writ of certiorari. Reference will be made to such facts where necessary.

SPECIFICATIONS OF ERROR TO BE URGED.

The Supreme Court of Missouri, Division No. 1, in its said opinion in said cause, erred:

1. In denying petitioner its valid defense under the federal act, namely, the defense that respondent's cause of action was fully satisfied by the written release. This written release was not avoided by incompetent parol evidence tending to prove a conditional delivery.

2. In holding that the remarks made by respondent's counsel in the trial court did not prevent petitioner from having a fair trial, and in holding that the petitioner was not entitled to a new trial on account thereof, said remarks being of such inflammatory nature as to implant in the minds of the jurors such deep-seated prejudice against petitioner that it could not have a fair trial under the Act of Congress known as the Federal Employers' Liability Act.

SUMMARY OF THE ARGUMENT.

I.

The Supreme Court of Missouri, Division No. 1, erred in denying petitioner a valid complete defense under the federal act which is fully sustained not only under Missouri decisions (prior to that in this case) but also under the decisions of this Court which, as the question arises under a federal statute, are final.

This question is one of general importance and the decision of the Supreme Court of Missouri departs from the well established and universally followed rule of law.

- Gunter v. Standard Oil Co., 60 F. (2d) 389, 391, a decision where both the federal and Missouri decisions are clearly discussed;
Huntington v. Toledo, St. L. & W. R. Co. (C. C. A.), 175 F. 532, 535;
C. A. Smith Lumber & Mfg. Co. v. Parker, 224 F. 347;
Farmers State Bank v. Sloop, 200 S. W. 304-5;
Calloway v. McKnight, 163 S. W. 932, 180 Mo. A. 621;
Robinson v. Kurns, 157 S. W. 790, 794, 250 Mo. 663;
Outcult Advertising Co. v. Barnes, 162 S. W. 631, 632, 176 Mo. A. 307;
Feren v. Epperson Inv. Co., 196 S. W. 435, 436;
Koob v. Ousley, 240 S. W. 102, 105;
General Accident, Fire & Life Ins. Co. v. Owen Bldg. Co., 192 S. W. 145, 146, 195 Mo. A. 371;
Elliott v. Winn, 264 S. W. 391, 393, 305 Mo. 105;
Bank v. Cloverleaf Casualty Co., 233 S. W. 78, 80, 207 Mo. A. 357;
Reigart v. Manufacturers Coal & Coke Co., 117 S. W. 61, 67, 217 Mo. 142;
J. B. Colt Co. v. Gregor, 44 S. W. (2d) 2, 328 Mo. 1216;
Shaffner v. Moore Shoe Co., 3 S. W. (2d) 263, 264;
State v. Grinstead, 282 S. W. 715, 721, 314 Mo. 55;

Murphy v. Holliway, 16 S. W. (2d) 107, 114, 223 Mo. A. 714;
Ocean Accident & G. Corp. v. Missouri Engineering & C. Co., 63 S. W. (2d) 196, 199;
St. Louis Basket & Box Co. v. Mastin, 79 S. W. (2d) 493, 495;
St. Louis Iron Mountain Ry. v. Taylor, 210 U. S. 281, 293;
Kansas City So. Ry. v. Albers Comm. Co., 223 U. S. 573, 591;
Seaboard Air Line Ry. v. Duvall, 225 U. S. 477, 488;
St. L. & Iron Mtn. Ry. v. McWhirter, 229 U. S. 265, 281;
Seaboard Air Line v. Padgett, 236 U. S. 668, 671;
C. M. & St. P. Ry. v. Coogan, 271 U. S. 472, 474;
Patton v. Atchison, T. & S. F. Ry. Co., 158 Pac. 576, 578;
Moore v. C. & O. Ry. Co., 291 U. S. 205, 214;
Brawley v. U. S., 96 U. S. 168;
Simpson v. U. S., 172 U. S. 372;
Richardson v. Hardwick, 106 U. S. 252;
Hawkins v. U. S., 96 U. S. 689;
Interurban Construction Co. v. Hays, 191 Mo. 248;
Wishart v. Gerhart, 105 Mo. App. 112;
Boswell v. Richards, 224 S. W. 1031.

Uniformity in the interpretation of the federal act extends to the type of proof necessary for judgment.

Garrett v. Moore-McCormack, 317 U. S. 239, 244;
New Orleans & N. E. R. Co. v. Harris, 247 U. S. 367, 371.

II.

The Court also erred in not holding that improper remarks made by counsel for the respondent, both in his opening statement to the jury and in his closing argument, were so prejudicial as to prevent the petitioner from having a fair and impartial trial by jury.

In a case arising under the Federal Employers' Liability Act, as in other cases, this Court has held that prejudicial remarks made in the presence of a jury ought to be condemned by appellate courts and a new trial ought to be granted in cases where the offense was less prejudicial than in the present instance.

N. Y. Central R. R. Co. v. Johnson, 227 U. S. 448,
49 Sup. Ct. Rep. 300;

M. St. P. & S. S. M. Ry. Co. v. Moquin, 283 U. S. 520,
51 Sup. Ct. Rep. 501.

ARGUMENT.

I.

The record discloses that the action is one under the Federal Employers' Liability Act of April 22, 1908, 45 U. S. C. A., Section 51, Chapter 149, Section 1, 35 Stat. 65. The question is purely one of law. If, as we contend, parol evidence was inadmissible to vary the terms of the written release, complete in itself, there was no issue of fact for a jury to decide.

The right claimed is a federal one arising under an act of Congress and therefore the decisions of this Court, not those of any state, are final. Petitioner's contention is plain and certain. It is simply this: that respondent's right of action was legally settled and finally satisfied by a valid release which he signed and delivered in consideration of the payment to him of a substantial sum which was entirely satisfactory and which he had a full and complete legal right to accept.

The sole ground for avoiding the release, which respondent signed and delivered, is that the delivery was conditional, that the settlement was conditioned on the approval of his lawyer. This afterthought came too late.

If the written release was to be made conditional, the place for the condition was in the release itself, not in his mind. Respondent, a mentally competent mature man, who had waited more than a year after the accident to settle his claim, signed and delivered a written release which specifically provided that it contained "the entire understanding" of the parties (R. p. 94, Ex. 1). He could not legally avoid it by offering incompetent parol evidence to vary it.

The rule of law is unquestioned and its application universal.

(a) That the uniform interpretation of the Federal Employers' Liability Act is a federal question for this Court finally to decide has been repeatedly held by this and the state courts. This uniformity of interpretation includes the sufficiency of proof to establish either the cause of action or the defense. In **St. Louis, I. M. & S. R. Co. v. Taylor**, 210 U. S. 281, this Court said at page 293:

“* * * Where a party to litigation in a state court insists, by way of objection to or requests for instructions, upon a construction of a statute of the United States which will lead, or, on possible findings of fact from the evidence may lead, to a judgment in his favor, and his claim in this respect, being duly set up, is denied by the highest court of the state, then the question thus raised may be reviewed in this court. The plain reason is that, in all such cases, he has claimed in the state court a right or immunity under a law of the United States and it has been denied to him. Jurisdiction so clearly warranted by the Constitution and so explicitly conferred by the act of Congress needs no justification. But it may not be out of place to say that in no other manner can a uniform construction of the statute laws of the United States be secured, so that they shall have the same meaning and effect in all the states of the Union.”

In the case of **Kansas City So. Ry. v. Albers Comm. Co.**, 223 U. S. 573, the Court in stating the rule said at page 591:

“The second ground has more color, but is also untenable. While it is true that upon a writ of error to a state court we cannot review its decision upon pure questions of fact, but only upon questions of law bearing upon the Federal right set up by the unsuccessful party, it equally is true that we may examine the entire record, including the evidence, if properly incorporated therein, to determine whether what pur-

ports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter. That this is so is amply shown by our prior rulings. Thus in **Mackay v. Dillon**, 4 How. 421, 447, where the state courts had given to certain evidence an effect claimed to be unwarranted by an applicable law of Congress, it was held that their decision 'on the effect of such evidence may be fully considered here.' In **Dower v. Richards**, 151 U. S. 658, 667, where the conclusiveness of findings of fact by a state court was elaborately considered, it was recognized that where the question is 'of the competency and legal effect of the evidence as bearing upon a question of Federal law the decision may be reviewed by this court.' "

In **Garrett v. Moore-McCormack Co.**, 317 U. S. 239, 244, the rule is stated:

"This Court has specifically held that the Jones Act is to have a uniform application throughout the country, unaffected by 'local views of common law rules.' **Panama R. Co. v. Johnson**, 264 U. S. 375, 392. The Act is based upon, and incorporates by reference, the Federal Employers' Liability Act, which also requires uniform interpretation. **Second Employers' Liability Cases**, 223 U. S. 1, 55 et seq. This uniformity requirement extends to the type of proof necessary for judgment. **New Orleans & Northeastern R. Co. v. Harris**, 247 U. S. 367."

Of the many other cases directly in point, citation of but a few suffice.

Seaboard Air Line Ry. v. Duvall, 225 U. S. 477, 485;
St. L. & Iron Mtn. Ry. v. McWhirter, 229 U. S. 265,
275;

Seaboard Air Line v. Padgett, 236 U. S. 668, 671;
C. M. & St. P. Ry. v. Coogan, 271 U. S. 472, 474;

Moore v. C. & O. Ry. Co., 291 U. S. 205, 214;
Patton v. Atchison, T. & S. F. Ry. Co., 158 Pac. 576
(Okl. 1916), involving, as here, a release.

(b) That the question is one involving the proper interpretation of the federal law cannot be doubted. That a written release which expressly provides that it contains the entire understanding of the parties cannot be avoided by parol evidence which adds a condition not found in the release itself, is a rule of law universal in its application.

In **Gunter v. Standard Oil Co.**, 60 F. (2d) 389, the Circuit Court of Appeals for the Eighth Circuit said at page 391:

“One of the main contentions of appellant is that the court erred in holding that the written instrument of release precluded proof of the alleged oral contract. Reliance is placed by appellant upon section 954, Revised Statutes of Missouri 1929 (Mo. St. Ann., Sec. 954), which reads as follows: ‘Whenever a specialty or other written contract for the payment of money, or the delivery of property, or for the performance of a duty, shall be the foundation of an action or defense in whole or in part, or shall be given in evidence in any court without being pleaded, the proper party may prove the want or failure of the consideration, in whole or in part, of such specialty or other written contract.’

“We do not think the statute has the effect claimed for it by appellant. The statute was intended to allow a party to show a want or failure in whole or in part of the consideration of a specialty or other written contract when such instrument was being used in evidence against him.”

* * * * *

“We think the Missouri statute did not change the rule that parol evidence will not be allowed to contradict, add to, or vary a written contract, absent fraud,

accident, or mistake, with perhaps an exception in the case of notes and due bills. The following cases from the courts of Missouri are in point:

- Interurban Construction Co. v. Hayes**, 191 Mo. 248, 291, 89 S. W. 927, 939;
Wishart v. Gerhart, 105 Mo. App. 112, 116, 78 S. W. 1094;
Boswell v. Richards, 224 S. W. 1031, 1032.”

In **Huntington v. Toledo, St. L. & W. R. Co.**, 175 F. 532, plaintiff attempted to add to the written release by parol evidence tending to show a promise to employ. The Court said at page 535:

“It is manifest that this instrument is not a mere receipt. It is contractual in form and substance. On its face it is explicit and apparently complete. Its language is in no particular suggestive of omission. Indeed, it required the offer of oral testimony to disclose any idea of omission. * * *

“It is claimed in argument that evidence of a promise to employ only affects and was intended only to affect the consideration mentioned in the agreement, and that, like the admission of payment or amount expressed in any ordinary receipt or deed, it may be explained by parol evidence. But the difficulty of applying the rule thus suggested to the present instrument is that, under the testimony offered, it would in terms introduce into the agreement covenants creating (aside from any question under the statute of frauds) new and important legal relations between the parties on the very subject of settlement contained in the written agreement.

“Similar holdings were made in **St. Louis & S. F. Ry. Co. v. Dearborn** (C. C. A.), 60 F. 880; **Holbrook etc. Corp. v. Sperling** (C. C. A.), 239 F. 715; **E. I. Du Pont de Nemours & Co. v. Kelly** (C. C. A.), 252 F. 523, 525; **In re Atwater** (C. C. A.), 266 F. 278, 281.”

Likewise in **C. A. Smith Lumber & Mfg. Co. v. Parker**, 224 F. 347, the plaintiff attempted to vary the written release by parol evidence that he was promised continual employment. The Court said, at page 351:

“To hold that such an instrument, executed under such circumstances and for such a purpose, is not contractual in its nature, would be, in our opinion, a clear violation of its unambiguous language. Similar releases, few, if any, of which were stronger in terms, and some not so strong, were held contractual in their nature, and therefore no more to be disputed or controlled by parol evidence than any other instrument in writing witnessing an agreement of the parties, in the cases of *St. Louis & S. F. Ry. Co. v. Dearborn*, 60 Fed. 880, 9 C. C. A. 286 (there follows a long list of authorities).”

In **Brawley v. United States**, 96 U. S. 168, the Court said, at page 173:

“All this is irrelevant matter. The written contract merged all previous negotiations, and is presumed, in law, to express the final understanding of the parties. If the contract did not express the true agreement, it was the claimant's folly to have signed it. The Court cannot be governed by any such outside considerations. Previous and contemporary transactions and facts may be very properly taken into consideration to ascertain the subject matter of a contract, and the sense in which the parties may have used particular terms, but not to alter or modify the plain language which they have used.”

Further discussion of the authorities is unnecessary. The following are but a few of the innumerable decisions supporting our contention:

Simpson v. United States, 172 U. S. 372, 379;
Richardson v. Hardwick, 106 U. S. 252, 254;
Hawkins v. United States, 96 U. S. 689, 697.

If respondent actually had in mind at the time he executed and delivered the written release, that its delivery was to be conditioned on his attorney's approval, it was his legal duty to see that such condition was incorporated in the written contract which he agreed contained the entire understanding between him and the company. The law does not permit him to substitute an alleged or pretended oral understanding for the written contract, complete in itself, which he admittedly signed and delivered. It is unthinkable that a settlement, evidenced by written release (no fraud being claimed), later can be avoided simply by the claim of one party that it was made subject to the approval of some third person.

II.

Counsel for respondent said in his opening statement:

“Well, shortly after he (plaintiff) engaged counsel, the claim agent then began paying visits to the man's home. As a matter of fact, I think the evidence will show that once attorneys are engaged in a case, that under the rules of the Supreme Court of Missouri, and under the rules that govern lawyers' conduct throughout the whole United States—” (R. 19).

(Objections made in anticipation that continuation would follow allegations in the reply overruled.) Counsel continued:

“What I proposed to say was that they knew as attorneys that they had no right under the rules of the Bar Association—American Bar Association—that governed lawyers throughout the United States, and the rules of the Supreme Court of Missouri, to go at any time direct to the client and attempt to negotiate with him by settlement” (R. 19).

(Objection made and overruled.)

Counsel then said:

“And for the reason I think the evidence will show you gentlemen—we expect to show you that for that reason that an attorney who would do that would be subject to discipline; that they had a man who is not an attorney, Heilig, who is not admitted to the Bar—they had him go out to see this man, because not being a member of the Bar he could go ahead and do the job, so they thought, without being disciplined, that is to say without being thrown out of the American Bar Association or something of that kind” (R. 20).

(Objection overruled.)

Counsel continued:

“This Heilig, he had a woman by the name of Artz. I think she is in the court room too. She is the wife of another employe who had been injured and Artz was in the same hospital with Mr. Kelley. They lived near the Kelleys in the same neighborhood. They were not friendly with the Kelleys; that is, not intimate neighbors or intimate friends; so when he (Heilig) couldn't come he would send the Artz woman over to find out how things were going, and the Artz woman would come over and sit down and talk and being the stool pigeon for the railroad company—” (R. 22).

(Objections overruled.)

Counsel said that Mrs. Artz reported to Heilig that it was “the time to make the kill” (R. 23).

Counsel also said, referring to the claim agent:

“He was in his hunting clothes; he was hunting ducks or something that had come into season, and he was out after ducks with a gun and out after Kelley with a pen” (R. 24).

In his closing argument counsel said, while attempting to defend his 50 per cent contingent fee contract (R. 156):

“When did he (counsel for defendant) learn of the 50% contract? He wasn’t going to take part in it he said. That’s a phony statement because his own claim agent says he learned of the 50% contract the night he tried to perpetrate the crime” (R. 172).

(Objection to the statement “He tried to perpetrate the crime” was sustained, the only objection sustained to any part of the argument.)

The reference to the rules of the American Bar Association and the successful effort to poison the minds of the jurors against counsel for the company was particularly offensive and unjustifiable because, as the record discloses, the settlement negotiations were conducted by a claim agent and not by attorneys for the company. There was no occasion whatever to refer to the rules of the American Bar Association or the ethics of the legal profession. The parties had an unquestioned legal right to settle the alleged cause of action. Settlement was not made until more than one year after the accident. The negotiations continued over a period of two days time and the settlement was concluded in the presence of disinterested witnesses (R. 47, 107, 142).

The attack on the lawyers was wholly unwarranted. That it succeeded in inflaming the minds of the jurors is shown by the fact that the Supreme Court of Missouri found it necessary to reduce the excessive verdict by \$15,000. If, as is apparent, the verdict was excessive, the remittitur could not cure the error.

In **N. Y. C. R. R. Co. v. Johnson**, 49 Sup. Ct. Rep. 300, 279 U. S. 310, this Court directed that the argument be limited to the question whether the alleged misconduct of counsel for the plaintiffs in their arguments to the jury was so unfairly prejudicial to the defendant as to justify a new trial. This Court held that it was, and in doing so said, at pages 303, 304 of Supreme Court Reporter (pp. 317-319 of 279 U. S.):

“In this condition of the record, the repeated statements of counsel that syphilis was the defense, coupled with the vituperative language which we have quoted and the statements that the petitioner had charged respondents with indecency, made in the face of testimony of respondents’ own witness that the disease was frequently transmitted by the use of drinking cups or other innocent means, was not fair comment on the evidence or justified by the record. Cf. *Cherry Creek Nat. Bank v. Fidelity & Casualty Co.*, 207 App. Div. 787, 202 N. Y. S. 611; *Grabowsky v. Baumgart*, 128 Mich. 267, 272, 87 N. W. 891; *Fisher v. Weinholzer*, 91 Minn. 22, 25, 97 N. W. 426; *Strudgeon v. Village of Sand Beach*, 107 Mich. 496, 504, 65 N. W. 616. Their obvious purpose and effect were improperly to influence the verdict by their appeal to passion and prejudice.

“However ill-advised, counsel for petitioner was within his rights in following this line of inquiry, and, even if it be assumed that the situation was one calling for comment on the evidence so elicited, neither petitioner nor its counsel was on trial for pursuing it. Want of good judgment or good taste, or even misconduct on the part of either, was not an issue in the case for the jury, nor could it excuse like conduct on the part of respondents’ counsel. See *Tucker v. Henniker*, 41 N. H. 317, 322; *Mittleman v. Bartikowsky*, 283 Pa. 485, 488, 129 A. 566; *Mitchum v. State of Georgia*, 11 Ga. 615, 629; *Welch v. Union Central Life Ins. Co.*, 117 Iowa 394, 404, 90 N. W. 828. An exhibition of any or all of these faults was not ground for a verdict in respondents’ favor or for enhancing it.

“Such a bitter and passionate attack on petitioner’s conduct of the case, under circumstances tending to stir the resentment and arouse the prejudice of the jury, should have been promptly suppressed. See *Masterson v. Chicago & N. W. Ry. Co.*, 102 Wis. 571, 574, 78 N. W. 757; *Gulf, Colorado & S. F. Ry. Co. v. Butcher*, 83 Tex. 309, 316, 18 S. W. 583; *Tucker v. Henniker*, *supra*, at page 322 of 41 N. H.; *Monroe v. Chicago & Alton R. Co.*, 297 Mo. 633, 644, 249 S. W. 644, 257 S. W. 469. The failure of the trial judge to

sustain petitioner's objection or otherwise to make certain that the jury would disregard the appeal could only have left them with the impression that they might properly be influenced by it in rendering their verdict, and thus its prejudicial effect was enhanced. See *Hall v. United States*, 150 U. S. 76, 81, 14 S. Ct. 22 (37 L. Ed. 1003); *Graves v. United States*, 150 U. S. 118, 121, 14 S. Ct. 40 (37 L. Ed. 1021); *Wilson v. United States*, 149 U. S. 60, 68, 13 S. Ct. 765 (37 L. Ed. 650). That the quoted remarks of respondents' counsel so plainly tended to excite prejudice as to be ground for reversal, is, we think, not open to argument. The judgments must be reversed, with instructions to grant a new trial.

"Respondents urge that the objections were not sufficiently specific to justify a reversal. But a trial in court is never, as respondents in their brief argue this one was, 'purely a private controversy * * * of no importance to the public.' The state, whose interest it is the duty of court and counsel alike to uphold, is concerned that every litigation be fairly and impartially conducted and that verdicts of juries be rendered only on the issues made by the pleadings and the evidence. The public interest requires that the court of its own motion as is its power and duty, protect suitors in their right to a verdict, uninfluenced by the appeals of counsel to passion or prejudice. See *Union Pac. R. R. Co. v. Field* (C. C. A.), 137 F. 14, 15; *Brown v. Swineford*, 44 Wis. 282, 293, (28 Am. Rep. 582). Where such paramount considerations are involved, the failure of counsel to particularize an exception will not preclude this court from correcting the error. *Brasfield v. United States*, 272 U. S. 448, 450, 47 S. Ct. 135 (71 L. Ed. 345).

"As there must be a new trial, attention should be directed to other objectionable conduct by respondents' counsel in the course of the trial: their repeated assertion, without supporting evidence, that the defense was a 'claim agent defense'; references to petitioner as an 'eastern railroad'; and statements that the railroad had 'come into this town' and that witnesses and records had been 'sent on from New York'

for the trial of the cause. Such remarks of counsel, and others of similar character, all tending to create an atmosphere of hostility toward petitioner as a railroad corporation located in another section of the country have been so often condemned as an appeal to sectional or local prejudice as to require no comment. See *Cherry Creek Nat. Bank v. Fidelity & Casualty Co.*, supra; *Dolph v. Lake Shore etc. R. Co.*, 149 Mich. 278, 280, 112 N. W. 981; *Southern R. Co. v. Simmons*, 105 Va. 651, 665, 55 S. E. 459."

In the case of **M. St. P. & S. S. M. Ry. Co. v. Moquin**, 283 U. S. 520, 51 Sup. Ct. Rep. 501, this Court, in a very brief opinion, decided a case under the following circumstances: The plaintiff had been injured in the course of his employment in interstate commerce, sued under the Federal Employers' Liability Act and obtained a large verdict. Complaint was made because of alleged misconduct of plaintiff's counsel in making appeals to passion and prejudice, and the railroad moved to set aside the verdict on that ground. The Supreme Court of Minnesota, on appeal, had held that the verdict was excessive because of passion and prejudice and ordered a new trial unless the plaintiff would remit a portion of the judgment, which plaintiff did. This Court granted a writ of certiorari, limited to the question arising from the failure of the state court to grant a new trial in a case under the Federal Employers' Liability Act where the verdict was obtained by appeals to passion and prejudice.

This Court held that a new trial should have been granted, and in so holding said, at page 502 of 51 Sup. Ct. Rep. (pp. 521-522 of 283 U. S.):

"It is unnecessary to cite from the record what occurred at the trial, or to discuss the propriety of the views of the court below as to the basis of the verdict. The finding is quoted above, and our sole concern is as to the action it requires. Nor need we inquire into the rules applicable in trials under state law. Whether

under the state's jurisprudence the present record would entitle petitioner to a new trial or to such a conditional order as was awarded is immaterial.

“In actions under the federal statute no verdict can be permitted to stand which is found to be in any degree the result of appeals to passion and prejudice. Obviously such means may be quite as effective to beget a wholly wrong verdict as to produce an excessive one. A litigant gaining a verdict thereby will not be permitted the benefit of calculation, which can be little better than speculation, as to the extent of the wrong inflicted upon his opponent.”

This Court scarcely needs to be told that the average juror has at the outset sufficient prejudice against a corporate defendant and sufficient sympathy for an injured employee to make wholly unnecessary and inexcusable attempts to secure excessive verdicts by inflammatory argument.

It is respectfully submitted by petitioner that the writ of certiorari herein prayed for ought to be issued. Petitioner prays this Court to issue the writ; to reverse the judgment of the Supreme Court of Missouri; to sustain the written release of the cause of action, and in the alternative to order that a new trial be granted.

Respectfully submitted,

WILLIAM R. GENTRY,
717 Louderman Bldg.,
St. Louis, Mo.,
Attorney for Petitioner.

VERNON W. FOSTER,
CHARLES A. HELSELL,
JOHN W. FREELS,
135 E. 11th Place,
Chicago, Illinois,
Of Counsel.